

### REMARKS

Claims 1-3 and 5-12 remain in this application. Claim 1 has been amended to more distinctly claim and particularly point out the invention. By this amendment, no new matter has been added.

Applicant wishes to thank the Examiner for indicating that Claims 2, 3, 6, and 9-12 have been allowed.

The application has been carefully reviewed in light of the Office Action dated April 15, 2003. Claims 1, 5, 7, 8 and 12 are rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,970,982 (Perkins). Additionally, Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Perkins.

As an initial matter, Applicant notes that the Office Action erroneously states at page 3 that Claim 12 is rejected. The Office Action summary page, as well as the discussion of Claim 12 in the previous Office Action dated October 30, 2002 indicate that Claim 12 is allowable. Accordingly, Applicant understands the rejection of Claim 12 to be a typographical error and reserves the right to separately argue the patentability of Claim 12 if Applicant's understanding is incorrect.

In order to expedite allowance, independent Claim 1, from which Claims 5, 7, and 8 depend, has been amended. Accordingly, these rejections are now moot. The patentability of the newly amended claims is discussed below.

As described in the specification, the invention relates to a vessel harvesting device comprising a stenting catheter, a sheath catheter with proximal and distal ends, and a cutting tube that is connectable to the distal end of the sheath catheter. The stenting catheter is located within the lumen of the sheath catheter.

More specifically, as shown in Figs. 1-4 of the present application, stenting catheter 11 fits *inside* a lumen of sheath catheter 13. Together stenting catheter 11 and sheath catheter 13 are inserted inside a ligated proximal end of the vessel to be

harvested. The stenting catheter 11 and sheath catheter 13 combination are caused to exit the ligated distal end of the vessel to be harvested. Upon exiting the distal end of the vessel to be harvested, a cutting tube 15 is placed over the end of the sheath catheter 13 and secured to the sheath catheter 13. The stenting catheter 11 then may be pulled taught, which allows the cutting tube 15 to migrate down the axis of the vessel to be harvested as the sheath catheter 13 is pulled apart, thereby causing the vessel to be harvested from surrounding tissue. See specification page 8, lines 1-21 and Figs. 1-4.

In contrast, even if Perkins could be construed as disclosing all the elements of Claim 1, which it does not, Perkins does not disclose the limitation found in amended Claim 1. Namely, Perkins does not disclose a stenting catheter located within the lumen of a sheath catheter. Instead, the Examiner contends that Perkins discloses a vessel harvesting device "comprising a stenting catheter (12), a sheath catheter (20) with proximal and distal ends (all catheters have such ends) and a cutting tube (26) that is connectable to the distal end of the sheath catheter....." Thus, referring to Perkins Figure 1a, and using the Examiner's nomenclature, Perkins' "stenting catheter (12)" is *not* located within a lumen of "sheath catheter (20)." Accordingly, Perkins does not meet all the limitations of independent Claim 1, and Applicant respectfully requests withdrawal of this rejection.

The remaining rejected Claims 5, 7, and 8 are believed to be allowable because they now depend from an allowable base claim. The Examiner's specific rejections of these claims are rendered moot by the amendment to Claim 1 and are not addressed further herein. Both of the foregoing rejections should be withdrawn.

In view of the foregoing, the Applicant respectfully submits that Claims 1-3 and 5-12 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited. To the extent it would be helpful to placing this application in condition for allowance, the Applicant

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encourages the Examiner to contact the undersigned counsel and conduct a telephonic interview.

Our check in the amount of \$375.00 is enclosed for Request for Continued Examination (RCE) pursuant to 37 C.F.R. § 1.17(e). Additionally, a check in the amount of \$205.00 is enclosed for the two-month extension of time pursuant to 37 C.F.R. § 1.17(a)(2).

The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,



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